



Federal Bureau of Investigation
Washington, D.C. 20535

October 19, 2018

MR. DAVID HILL
**12585-007
UNITED STATES PENITENTARY
POST OFFICE BOX 8500
FLORENCE, CO 81226

FOIPA Request No.: 1419719-000
Subject: FRAZIER, ROBERT
(1999 - January 2001 / Et Al)

Dear Mr. Hill:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI. The FOIPA Request Number listed above has been assigned to your request. Below you will find informational paragraphs relevant to your request. Please read each item carefully.

You have requested records on one or more third party individuals. Please be advised the FBI will neither confirm nor deny the existence of such records pursuant to FOIA exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 522 (b)(6) and (b)(7)(C). The mere acknowledgement of the existence of FBI records on third party individuals could reasonably be expected to constitute an unwarranted invasion of personal privacy. This is our standard response to such requests and should not be taken to mean that records do, or do not, exist. As a result, your request has been closed. For more information about making requests for records on third party individuals (living or deceased), please see the enclosed FBI Third Party Fact Sheet.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records subject to the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail (both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Enclosed for your information is a copy of the Explanation of Exemptions and the FBI Third Party Fact Sheet.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", followed by a stylized flourish or number "3".

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Information Management Division

Enclosures

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.



FBI THIRD PARTY FACT SHEET

- **Express authorization and consent.** If you seek disclosure of any existing records on this basis, complete and return a Certification of Identity form. You may make additional copies of this form if you are requesting information on more than one individual. The subject of your request should complete this form and then sign it. Alternatively, the subject may prepare a document containing the required descriptive data and have it notarized. The original certification of identity or notarized authorization with the descriptive information must contain a legible, original signature before FBI can conduct an accurate search of our records.
- **Proof of death.** If you seek disclosure of any existing records on this basis, proof of death can be a copy of a death certificate, Social Security Death Index, obituary, or another recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago.
- **Public Interest Disclosure.** If you seek disclosure of any existing records on this basis, you must demonstrate that the public interest in government operations outweighs personal privacy interests. In this regard, you must show that the public interest sought is a significant one, and that the requested information is likely to advance that interest.

11/19/2018

Mr. David Hill
Register No. 12585-007
USP
P.O. Box 8500
Florence CO 81226

Dear Mr. David Hill,

This is to advise you that your administrative appeal from the action of the FBI regarding Request No. 1419719 was received by the Office of Information Policy (OIP) of the U.S. Department of Justice on 11/09/2018.

OIP has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number DOJ-AP-2019-000979. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through FOIAonline, you may also obtain an update on the status of your appeal by logging into your account.

Sincerely,

PRISCILLA JONES

Digitally signed by PRISCILLA
JONES

Date: 2018.11.28 12:54:42 -05'00'

Priscilla Jones

Supervisory Administrative Specialist



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Mr. David Hill
Register No. 12585-007
United States Penitentiary
Post Office Box 8500
Florence, CO 81226

Re: Appeal No. DOJ-AP-2019-000979
Request No. 1419719
SRO:RNB

VIA: U.S. Mail

Dear Mr. Hill:

You appealed from the action of the Federal Bureau of Investigation on your Freedom of Information Act request for access to records concerning Robert S. Frazier.¹ I note that your appeal concerns the FBI's full denial of your request pursuant to FOIA Exemptions 6 and 7(C). Please note that this Office was closed due to a lapse in funding appropriations between December 22, 2018 and January 25, 2019, which resulted in a delay in responding to your appeal.

After carefully considering your appeal, I am affirming the FBI's action on your request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly refused to confirm or deny the existence of records responsive to your request. Confirming or denying the existence of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C). Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by these exemptions. See, e.g., People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 544 (D.C. Cir. 2014) (upholding agency's refusal to neither confirm nor deny existence of records that would confirm whether investigation of third party had occurred); see also Antonelli v. FBI, 721 F.2d 615, 618 (7th Cir. 1983) (finding that confirming whether third party has been the subject of investigation would likely "constitute an invasion of that person's privacy that implicates the protections of Exemptions 6 and 7").²

¹ The FBI handled the portion of your request for records concerning yourself separately.

² Please note that while you claimed to attach the third party's authorization to your appeal, the document you attached does not contain sufficient identifying information. You may wish to submit a new request directly to the FBI with proper third party authorization. As a courtesy, I am providing a blank certification of identification form.

- 2 -

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

2/15/2019

X 

Sean R. O'Neill

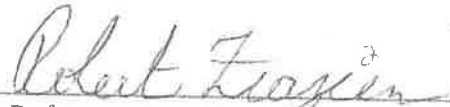
Chief, Administrative Appeals Staff

Signed by: SEAN O'NEILL

Enclosure

Freedom of Information Act/
Privacy Act Request 5 U.S.C. § 552a

Under the penalties of perjury pursuant to 18 U.S.C. § 1001,
I am Robert S. Frazier, I authorize the release of all document's
pertaining to me and my arrest for the armed robbery of the F&M
bank at 6257 Old Dominion Drive, Mclean, Va, on November 15,
1999. I was prosecuted in Alexandria District court in Virginia.
I appeared before judge Bryan. I request release of the transcripts
of my court proceeding. I request release of my testimony before
the grand jury, with date and time of my appearance, in connection
with United States v. David Hill, case No. 01-191-A. I request to
release these document's to anyone who request them. Especially
David Hill # 12585-007. I request the release of the arrest warrant
with attach affidavit for my arrest for this crime. I request the
release of all forensic reports conduct with my DNA on any crime
scene evidence in connection with the F&M bank robbery. Do not
withhold one single document pertaining to me, and the F&M bank
robbery, and the case of David Hill, including my PSI, presentence
report.


Robert S. Frazier # 48640-083
P.O. BOX. 12015.
Terre Haute, IN. 47801.

signed before me, Eddie Embry
Judge, State of Indiana, U.S.
notary, my commission expires
12/2014

1 in the middle of the morning, one in the middle of the
2 afternoon and try to recess for lunch about 1 o'clock. And
3 we will probably go in the neighborhood of 5, 5:30 here in
4 the afternoon.

5 All right. Miss Friedrich.

6 MS. FRIEDRICH: Thank you, Your Honor.

7 This is a case about bank robberies, about three
8 bank robberies committed in Northern Virginia from October
9 1999 to January of 2000.

10 The evidence you will hear in this case will prove
11 three things: First, the evidence will prove that the
12 individuals who committed these robberies were not amateurs.
13 They were professionals. They were sophisticated criminals
14 who came across the river from Northeast, D.C. to commit
15 robberies in Northern Virginia.

16 They wore masks. They wore gloves. They carried
17 guns. They used stolen vehicles. They used switched
18 vehicles. And they got in and out of those three banks very
19 quickly.

20 The second thing the evidence will show in this
21 case is that this crew was a violent gang, a very violent
22 gang. They used threats and they used guns to intimidate and
23 to assault victims inside the banks. They threatened to kill
24 them. They pointed guns at them. They hit them. And they
25 fired shots.

1 The third thing the evidence will show is that
2 these three bank robberies were committed by different groups
3 of people, but the one thing they all had in common was a
4 leader. And that common element is sitting before you here
5 today, David Hill. He was the leader, he was the organizer,
6 he was the recruiter of this gang from Northeast, D.C.

7 During the trial you will hear from three different
8 levels of witnesses. You will hear from victims of the
9 robberies and eyewitnesses who were outside the banks.
10 Second, you will hear from two of David Hill's crew members,
11 his co-conspirators. And finally, you will hear the
12 scientific testimony, testimony from scientific experts.

13 Together these three levels of witnesses will prove
14 that on October 6, 1999 David Hill, Nathan Wright and Vincent
15 Bishop robbed the Virginia Commerce Bank in Arlington,
16 Virginia of over \$14,000. And in that robbery they used a
17 stolen brown Oldsmobile as a getaway vehicle.

18 These witnesses will also prove that about a month
19 later on November 15 of 1999 David Hill, a guy named Derek
20 Fleming, also known as Dukey, and Robert Frazier robbed the
21 F&M Bank in McLean, Virginia. In that robbery they stole
22 over \$24,000, and they fled the bank in a stolen green Jeep
23 Cherokee.

24 These witnesses will prove that there was a third
25 robbery on January 20, 2000. And that was a robbery of the

1 First Virginia Bank. And in that robbery David Hill and at
2 least one other man robbed that bank of over \$15,000, and
3 they left the bank in a stolen blue Buick.

4 Because David Hill and his crew were professionals
5 and because they wore bandanas and scarfs to cover their
6 faces, there will be no witness who will be able to identify
7 David Hill or any other member of his crew as one of the
8 robbers inside the banks. And because they wore gloves to
9 hide their fingerprints, there will be no fingerprints inside
10 the banks to prove who those robbers were.

11 But what will enable us to prove our case to you is
12 what David Hill did not know. And what he did not know was
13 that individuals both inside and outside the banks would see
14 him and other crew members around these getaway vehicles.
15 That he would leave evidence, scientific evidence inside
16 those getaway vehicles.

17 And, finally, that two members of his crew would
18 talk.

19 Let me take you back to October 6, 1999, the date
20 of the first robbery, the Virginia Commerce Bank robbery. On
21 that date Allen Alexander, a repairman who just happened to
22 be in the bank, was behind the counter repairing a money
23 counting machine when three masked men entered the bank.

24 Before Allen Alexander had any idea what was
25 happening, one of those masked men pistol-whipped him over

1 the head with a gun. The man came behind the counter, he
2 pointed his gun at Allen Alexander and two other tellers who
3 were behind the teller counter. While he got the money, the
4 other two masked man stayed in the bank as lookouts.

5 Within minutes of entering the bank, they were out
6 of the bank. They left in a stolen brown Oldsmobile that was
7 recovered a short distance from the bank.

8 In the second robbery, which occurred about a month
9 later on November 15 of 1999, that was the F&M Bank in
10 McLean, Virginia. On that date Sarah Jeffrey, a Customer
11 Service Representative, just happened to be at one of the
12 front windows of the bank looking out when she saw a Jeep
13 pull up. She saw two men get out of the Jeep and immediately
14 she knew the bank was going to be robbed. The two men were
15 covered head to toe, they were carrying firearms and they
16 were carrying empty bags.

17 Before Sarah Jeffrey had a chance to get back to
18 her desk and push the alarm button, one of those two men
19 pulled her up by her neck, dragged her behind the teller
20 counter and at gunpoint ordered her to clean out the teller
21 drawers.

22 While that robber had Sarah Jeffrey behind the
23 teller counter, the other masked robber took two other bank
24 employees at gunpoint into the vault room and there, as he
25 held his gun at them, he ordered them to open the vaults.

1 When one of those two bank employees didn't act
2 quickly enough, the robber got impatient. He cocked his gun
3 and he pointed his gun at her. He then began unloading the
4 vault, the money into his bag. And within moments he fired a
5 shot that went in the direction of one of those bank
6 employees and just missed her.

7 After that shot, the two men fled the bank. They
8 went out, they got back in the green Jeep. Again, another
9 stolen vehicle, and they fled. That Jeep was recovered,
10 again, a short distance from the bank.

11 In that robbery, although the two robbers got over
12 \$24,000, they only made it out of the bank with over \$19,000
13 because one of those two robbers dropped his bag as they were
14 hurrying out of the bank.

15 In the third robbery, the January 20, 2000 robbery,
16 that's the robbery of the First Virginia Bank in Falls
17 Church, Virginia, on that date two men, again covered head to
18 toe, came in the bank. When they got in the bank, one of
19 them fired an attention-getting shot into the ceiling of the
20 bank. While one of the robbers secured the bank, the other
21 one went behind the teller counter and pointed his gun at
22 David Chwairy, a teller who was working that day. At
23 gunpoint he ordered David Chwairy to unload the teller
24 drawer.

25 While Mr. Chwairy was getting money out of the

1 1999 robbery. He went in with David Hill and Vincent Bishop
2 into the Virginia Commerce Bank.

3 Robert Frazier will tell you about the November 15
4 robbery, the second robbery, the F&M Bank robbery. He stole
5 the vehicles that were used in that robbery, and he waited in
6 the switch car while David Hill and Derek Fleming went inside
7 the bank.

8 The third level of witnesses you will hear from is
9 a scientific expert by the name of Alan Giusti. Alan Giusti
10 is a DNA expert with the FBI. And Alan Giusti will tell you
11 that DNA that was found on three separate items of clothing,
12 in not one, but in two separate getaway vehicles that were
13 used in two separate robberies, the November 15, 1999 and the
14 January 2000 robbery, he will tell you that DNA on those
15 items of clothing matched David Hill's DNA.

16 He will testify about a baseball hat that was found
17 in the green Jeep Cherokee that was used in the November 15
18 robbery. He will testify about a gray knit cap and a gray
19 sweatshirt that were found in the blue Buick from the January
20 20 robbery.

21 Again, victims and eyewitnesses, the corroborated
22 testimony of Nathan Wright and Robert Frazier, and scientific
23 evidence will prove that David Hill robbed the Virginia
24 Commerce Bank, the F&M Bank and the First Virginia Bank.

25 This is just a summary of the facts you will hear

1 during this trial. At the end of the trial after you have
2 had a chance to hear all the evidence, we will have an
3 opportunity to speak to you again. And at that time we will
4 ask that you find David Hill guilty of these violent
5 offenses.

6 MR. AMOLSCH: Good morning. My name is
7 Christopher Amolsch, and I represent David Hill. And I want
8 to thank you for your attention today and for your
9 willingness to sit impartially and hear this case.

10 As the Judge will probably explain to you, jury
11 duty is one of the most important duties a citizen of this
12 society can undertake.

13 The judge is the ultimate authority on the law, but
14 you are going to determine the validity of the factual basis
15 of the Government's case. You alone are going to determine
16 who is to be believed and who is not to be believed. You are
17 going to determine who is to be distrusted. You are going to
18 decide whether the facts prove beyond a reasonable doubt that
19 David Hill is guilty or not. And you are going to determine
20 whether David Hill goes home or if he goes to the
21 penitentiary.

22 In most cases, in most jury cases I would imagine
23 that would be a difficult task, but in this case you will
24 find it to be quite easy.

25 I believe after you have heard all the evidence and

1 Q. You don't know from hanging out with your brother?
2 Do you who Tom Bone is?

3 A. Yes.

4 Q. How do you know him?

5 A. I seen him around the neighborhood. I don't know
6 him. I don't know him personally, but I seen him. I have
7 talked to him before like, hey, what's up. But I don't know
8 him like--

9 Q. Right. And Ty, just to make sure I go back to
10 this, your brother was out on November 15, wasn't he?

11 A. My brother?

12 Q. Ty Hart was out on bond?

13 A. He was not out on bond.

14 Q. Oh, he wasn't out on bond?

15 MR. MELLIN: Objection, Your Honor. The question
16 has been asked and answered.

17 THE COURT: Objection sustained.

18 BY MR. AMOLSCH: (Continuing)

19 Q. Now, you went over this with the Government, but
20 you pleaded guilty with a plea agreement. And as you said,
21 the Government only charged you as a minor?

22 A. Yes.

23 Q. From speaking to your lawyer, do you know how much
24 of a reduction in your sentence you got just for being
25 charged as a minor and not as an adult?

1 A. Can you repeat that?

2 Q. The Government filed a motion to charge you as an
3 adult, correct?

4 A. Yes.

5 Q. If you had been charged and convicted as an adult,
6 do you know what your sentence likely would have been?

7 A. If I was found guilty?

8 Q. Found guilty as an adult.

9 A. I was told that I could look at up to-- The
10 maximum is 20 years.

11 Q. But instead, you only got four years, right?

12 A. Yes, for pleading as a juvenile.

13 Q. And cooperating and telling them all you know,
14 right?

15 A. Not all I know, but what I know.

16 Q. Do you understand that you have a plea agreement
17 that requires you to tell the Government about any criminal
18 activity that you know about?

19 A. Yes.

20 Q. Have you told the Government about any criminal
21 activity that you know about?

22 A. All that they asked me.

23 Q. But that's not your obligation --

24 MR. MELLIN: Objection, Your Honor.

25 Q. -- according to your plea agreement.

1 NOTE: The witness is sworn.

2 ALAN GIUSTI, called by counsel for the United
3 States, first being duly sworn, testifies and states:

4 DIRECT EXAMINATION

5 BY MS. FRIEDRICH:

6 Q. Good morning. Please state your name.

7 A. Good morning. My name is Alan Giusti. Last named
8 is spelled G-i-u-s-t-i.

9 Q. Where are you employed?

10 A. I am employed by the FBI Laboratory located in
11 Washington, D.C. in the DNA Analysis Unit.

12 Q. How long have you been with the FBI?

13 A. I have been with the FBI Laboratory almost 13
14 years.

15 Q. What do you do in the DNA Analysis Unit?

16 A. Our responsibilities are the examination of
17 evidence submitted as case work. To conduct DNA analysis on
18 that evidence. To form conclusions, write reports and
19 testify to the results if necessary.

20 Q. Approximately how many DNA examinations have you
21 conducted?

22 A. Well, I have been involved with DNA analysis for
23 about 19 years now. So, I have done thousands, probable tens
24 of thousands of examinations.

25 THE COURT: Is there any question as to his

1 qualifications?

2 MR. AMOLSCH: I just have one question, not about
3 those particular qualifications, just about the breadth of
4 his qualifications. If I may ask, Your Honor, that may save
5 some time.

6 THE COURT: All right, go ahead.

7 VOIR DIRE EXAMINATION

8 BY MR. AMOLSCH:

9 Q. Good morning, Mr. Giusti.

10 A. Good morning.

11 Q. Are you also an expert in the handling and storage
12 of DNA as well the analysis?

13 A. Yes, that's part of the process.

14 Q. Okay. And the particulars about how evidence is to
15 be transported back and forth from particular locations?

16 A. Yes.

17 MR. AMOLSCH: Okay. Thank you. I have no
18 questions about his qualifications.

19 THE COURT: All right. Go ahead with your
20 questions. He is qualified.

21 MS. FRIEDRICH: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. FRIEDRICH: (Continuing)

24 Q Agent Giusti, can you describe for the jury what
25 DNA is.

1 A. Sure. Actually I am not an agent, I am a civilian
2 employee of the FBI.

3 Q. Mr. Giusti.

4 A. To clarify that. Thank you. DNA stands for
5 deoxyribonucleic acid. It is basically the blueprint for
6 every living organism. So, every living thing from humans to
7 plants has their own unique set of DNA. And the DNA is what
8 makes that organism what it is.

9 Q. Where is DNA found?

10 A. Well, in human beings DNA is found in what are
11 called the cells. Your cells are like the building blocks of
12 your body. There are billions upon billions of cells in your
13 body.

14 Each cell or virtually every cell has a compartment
15 in it where the DNA is stored. And that DNA in that
16 compartment represents the total blueprint for every living
17 organism or for the organism that you happen to be.

18 Q. When you examine evidence for DNA, what are the
19 most common sources where you find DNA?

20 A. On forensic DNA analysis, we work mainly with body
21 fluids, blood, semen, saliva, in some cases tissue.

22 Q. Can you explain what DNA analysis is.

23 A. DNA analysis is really nothing more than a
24 comparison test. What we do in the laboratory is to get
25 evidence, we isolate the DNA from items of evidence, be it

1 blood stain, saliva stain, semen stain, whatever. And we
2 develop a DNA profile or DNA type from that evidence.

3 We then also receive known samples that are
4 collected under controlled conditions, usually blood or
5 saliva, and we conduct DNA analysis on those items. And we
6 develop a DNA profile or DNA type from those known specimens.

7 We then compare, I then compare the known DNA
8 profile to the evidence DNA profile and determine could this
9 person represented by the known sample have left this body
10 fluid stain as evidence, or could this person have not left
11 that body fluid stain.

12 So, it is really nothing more than a comparison
13 between a known sample of DNA and a questioned sample of DNA
14 isolated from evidence.

15 Q. So, can the DNA comparisons result in a match?

16 A. Yes, they can.

17 Q. Did you perform examinations in this case?

18 A. Yes, I did.

19 Q. What did you examine?

20 A. I examined a number of items of evidence that were
21 submitted from our field office, and DNA analysis was
22 conducted on those items.

23 Q. Were those items submitted in connection with two
24 different bank robberies?

25 A. Yes, they were.

A. Giusti - Direct

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1 Q. Did you compare that evidence to known DNA samples?

2 A. Yes, I did. I received a total of five known
3 samples for comparison purposes.

4 Q. Who were the known samples that you received? Who
5 were they from?

6 A. The five individuals were Derek Fleming, David
7 Hill, Robert Frazier, Darnell Lawrence and Nathan Wright.

8 Q. Are the results of your examination contained in
9 reports?

10 A. Yes, they are.

11 Q. If I could please have you look, Mr. Giusti, at
12 Government's Exhibits in the notebook 82-A through
13 Government's Exhibit 85.

14 Tell us if you recognize this.

15 A. Yes, I do. These are I believe copies of reports
16 that were prepared that deal with the results of
17 examinations, I think both trace evidence and DNA
18 examinations.

19 Q. Does Government's Exhibit 82-A and 83-A just
20 contain a list of some of the evidence you examined?

21 A. Yes, they do.

22 Q. Focusing on the evidence you examined that was
23 submitted in connection with the first robbery, was that the
24 11/15/1999 F&M Bank robbery?

25 A. Yes, yes, it is.

A. Giusti - Direct

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1 Q. What evidence did you examine?

2 A. I examined two items. There was a hat that was
3 identified in our laboratory as specimen Q1 or questioned
4 specimen one. And a gym bag, which was given the designation
5 Q2 or questioned specimen number two.

6 Q. If I could please show the witness Exhibit 53,
7 please.

8 Mr. Giusti, do you recognize that item?

9 A. Yes, I do. This is our specimen Q1, submitted
10 under-- Yes, submitted under laboratory number 000-821012 in
11 connection with the, I believe, 11/15/99 bank robbery.

12 Q. That is a baseball hat?

13 A. Yes, it is.

14 Q. Did you find any DNA on the hat?

15 A. Yes, I did.

16 Q. Where did you find it?

17 A. The sweatband area of the hat and the brim were
18 both examined, and DNA was isolated from both of those areas.

19 Q. Okay. Did you test it?

20 A. Yes. DNA typing or DNA testing was conducted on
21 that item.

22 Q. And what conclusions did you reach from your tests?

23 A. Well, in comparison to the known samples that I had
24 previously received and had done DNA analysis on, I
25 determined that the DNA from this item actually was a mixture



U.S. Department of Justice

United States Attorney

Eastern District of Virginia

1100 Jamieson Avenue (703) 299-3808
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September 11, 2003

APPENDIX A

Craig W. Sampson, Esq.
2025 E. Main Street
Suite 107
Richmond, VA 23223

Via Facsimile (804-648-0719) and mail

Re: David Hill

Dear Mr. Sampson:

It has come to our attention that a technician in the Federal Bureau of Investigation (FBI) laboratory did not follow established protocols while performing certain control tests while analyzing samples submitted in the prosecution of David Hill and others related to a string of armed bank robberies in Northern Virginia. Although it is not clear at this time whether your client's samples were affected, we are hereby providing notice that the FBI laboratory protocol was not followed by technician Jacqueline Blake. Ms. Blake did not complete the processing of certain negative control samples during the DNA testing process of some of samples. As a result of the discovery of the failure, the FBI laboratory began retesting DNA samples. To date, the retests have confirmed and supported the previously reported conclusions.

I have requested that the lead FBI agent Rob Saale and the FBI laboratory expert Alan Guisti determine what samples related to this case were affected and whether any retesting can be attempted at this point. I will contact you when I receive further information from the FBI.

Sincerely,

Steven D. Mellin